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jc961 U.S. PTO

# UTILITY PATENT APPLICATION TRANSMITTAL

Submit an original and a duplicate for fee processing  
(Only for new nonprovisional applications under 37 CFR §1.53(b))

|                     |  |
|---------------------|--|
| Attorney Docket No. | 213257   |
| First Inventor      | KOVESDI, Imre  |
| Title               | COMPLEMENTARY ADENOVIRAL VECTOR SYSTEMS AND CELL LINES |
| Express Mail No.    | EJ905695499US  |

jc971 U.S. PTO  
09/964065

10/92/60  
09/26/01

## APPLICATION ELEMENTS

ADDRESS TO: Assistant Commissioner for Patents  
Box Patent Application  
Washington, DC 20231

## ACCOMPANYING APPLICATION PARTS

- ☒ Utility Patent Application Transmittal Form
- ☐ Applicant claims small entity status.  
See 37 CFR 1.27.
- ☒ Specification (including claims and abstract)  
[Total Pages 41]
- ☒ Drawings [Total Sheets 4]  
☒ Combined Declaration and Power of Attorney [Total Pages 4]
  - ☐ Unexecuted
  - ☒ Copy from prior application  
[Note Box 6 below]
  - ☐ Deletion of Inventor(s) Signed statement attached deleting inventor(s) named in the prior application
- ☒ Incorporation by Reference: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b is considered as part of the disclosure of the accompanying application and is hereby incorporated by reference.
- ☒ Application Data Sheet. See 37 CFR 1.76
- ☐ CD-ROM or CD-R in duplicate, large table or Computer Program (Appendix)
- Nucleotide and/or Amino Acid Sequence Submission
  - ☒ Computer Readable Form (CRF)
  - Specification Sequence Listing on:
    - ☐ CD-ROM or CD-R (2 copies); or
    - ☒ Paper Copy
  - ☒ Statement verifying identity of above copies

- ☐ Applicant requests early publication. (include publication fee under 37 CFR 1.18(d))
- ☐ Assignment Papers  
(cover sheet and document(s))
- ☐ 37 CFR 3.73(b) Statement (when there is an Assignee)
- ☐ Power of Attorney
- ☐ English Translation Document (if applicable)
- ☐ Information Disclosure Statement (IDS)  
☐ Form PTO-1449  
☐ Copies of Listed Documents
- ☒ Preliminary Amendment
- ☒ Return Receipt Postcard  
(Should be specifically itemized)
- ☐ Certified Copy of Priority Document(s)
- ☐ Request & Certification Under 35 USC 122(b)(2)(B)(i) (Form PTO/SB/35 or its equivalent attached)
- ☒ Other:  
Request for Declaration of Interference.  
Amendments to Specification Made by Preliminary Amendment.  
Amendments to Claims Made by Preliminary Amendment.  
Pending Claims After Preliminary Amendment.

21. If a **CONTINUING APPLICATION**, check appropriate box and supply the requisite information in (a) and (b) below:

(a) ☐ Continuation ☐ Divisional ☐ Continuation-in-part of prior Application No. , filed on ,  
Prior application information: Examiner ; Group Art Unit:

(b) Preliminary Amendment: Benefit of earlier filing date - 35 USC 120. The Commissioner is requested to amend the specification by inserting the following sentence before the first line:

"This is a ☒ continuation ☐ divisional ☐ continuation-in-part (CIP) of  
☒ Application No. 08/258,416, filed on June 10, 1994, which is incorporated by reference."  
☐ International Application No. , filed on , which designates the U.S., and which is incorporated by reference."

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|   |              |  |              |                            |           |
|---|--------------|--|--------------|----------------------------|-----------|
| <b>UTILITY PATENT APPLICATION TRANSMITTAL</b>                   |              |  |              | Attorney Docket No. 213257 |           |
| <b>APPLICATION FEES</b>   |              |  |              |                            |           |
| BASIC FEE   |              |  |              |                            | \$ 710.00 |
| CLAIMS  | NUMBER FILED |  | NUMBER EXTRA | RATE                       |           |
| Total Claims  | 13 - 20 =    |  | 0            | x \$18.00                  | \$ 0.00   |
| Independent Claims  | 3 - 3 =      |  | 0            | x \$80.00                  | \$ 0.00   |
| <input type="checkbox"/> Multiple Dependent Claim if applicable |              |  |              | + \$270.00                 | \$ 0.00   |
| Total of above calculations =                                   |              |  |              |                            | \$ 710.00 |
| Reduction by 50% for filing by small entity =                   |              |  |              |                            | (\$ 0.00) |
| <input type="checkbox"/> Assignment fee if applicable           |              |  |              | + \$40.00                  | \$ 0.00   |
| <input type="checkbox"/> Early publication fee if applicable    |              |  |              | + \$300.00                 | \$ 0.00   |
| TOTAL =   |              |  |              |                            | \$ 710.00 |

22. ☒ Please charge my Deposit Account No. 12-1216 in the amount of \$ 710.00.

23. ☐ A check in the amount of \$            is enclosed.


24. The Commissioner is hereby authorized to credit overpayments or charge any additional fees of the following types to Deposit Account No. 12-1216:

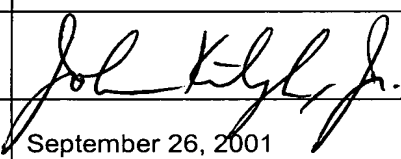
a. ☒ Fees required under 37 CFR 1.16.

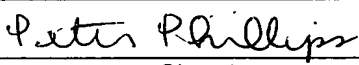
b. ☒ Fees required under 37 CFR 1.17.

25. ☒ The Commissioner is hereby generally authorized under 37 CFR 1.136(a)(3) to treat any future reply in this or any related application filed pursuant to 37 CFR 1.53 requiring an extension of time as incorporating a request therefor, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 12-1216 for any fee that may be due in connection with such a request for an extension of time.

**26. CORRESPONDENCE ADDRESS**

|  |  |
|--|--|
| <input checked="" type="checkbox"/> Customer Number: 23460<br><br><b>23460</b><br>PATENT TRADEMARK OFFICE | <input type="checkbox"/> , Reg. No.<br>Leydig, Voit & Mayer, Ltd.<br>Two Prudential Plaza, Suite 4900<br>180 North Stetson<br>Chicago, Illinois 60601-6780<br>(312) 616-5600 (telephone)<br>(312) 616-5700 (facsimile) |
|--|--|

|           |   |
|-----------|---|
| Name      | John Kilyk, Jr., Registration No. 30,763  |
| Signature |  |
| Date      | September 26, 2001  |

|  |   |                    |
|--|---|--------------------|
| Certificate of Mailing Under 37 CFR 1.10   |   |                    |
| I hereby certify that this Utility Patent Application Transmittal and all accompanying documents are being deposited with the United States Postal Service "Express Mail Post Office To Addressee" Service under 37 CFR 1.10 on the date indicated below and is addressed to: Assistant Commissioner of Patents, Box Patent Application, Washington, D.C. 20231. |   |                    |
| Peter Phillips   |  | September 26, 2001 |
| Name of Person Signing   | Signature   | Date               |

Utility (Rev. 11/13/2000)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

Kovesdi et al.

Art Unit: Not Assigned

Application No. Not Assigned  
(Continuation of U.S. Patent App. No. 08/258,416)

Examiner: Not Assigned

Filed: September 6, 2001

For: **COMPLEMENTARY ADENOVIRAL VECTOR  
SYSTEMS AND CELL LINES**

**REQUEST FOR DECLARATION OF INTERFERENCE**

Commissioner of Patents  
Washington, D.C. 20231

Dear Sir:

Applicants seek to have an interference declared between this application and a U.S. patent. In support thereof, this Request and the enclosed documents supply information pursuant to 37 C.F.R. §§ 1.607 and 1.608.

**A. 37 C.F.R. § 1.607**

The following information is supplied pursuant to 37 C.F.R. § 1.607(a) and (c):

**(1) Identity of Opposed Patent:**

U.S. Patent 6,127,175 (Vigne et al.).

**(2) Proposed Counts:**

(a) A recombinant cell line for the production of a defective adenovirus, comprising, inserted into its genome, part of an adenovirus E4 region comprising an ORF6 reading frame under the control of a functional promoter, wherein the inserted E4 region does not contain a functional ORF4 reading frame.

(b) A plasmid comprising part of an E4 region of an adenovirus genome carrying a reading frame ORF6 under the control of an inducible promoter.

(c) A defective recombinant adenovirus  $\Delta E1$ ,  $\Delta E4$ , wherein all or part of the E1 region and the whole of the E4 region is deleted.

(d) A method for the production of a recombinant adenovirus which is defective at least for the E4 region, comprising infecting a cell line comprising, inserted into its genome, part of an adenovirus E4 region comprising an ORF6 reading frame under the control of a functional promoter, wherein the inserted E4 region does not contain a functional ORF4 reading frame, with the E4 defective adenovirus and harvesting the adenovirus.

**(3) and (4) Claims Corresponding to the Proposed Counts:**

The proposed counts correspond exactly to claims 36, 44, 45, and 48 of the present application. All other claims that correspond to one of the proposed counts are dependent on one of these claims. Thus, no other explanation pursuant to Section 1.607(a)(4) is needed.

| Proposed Count | U.S. Patent 6,127,175 Claims(s)               | Pending Claim(s)                   |
|----------------|---|------------------------------------|
| (a)            | 1, 3, 4, 5, 6, 11, 12, 13, 14, 15, 16, and 19 | 36, 37, 38, 39, 40, 41, 42, and 43 |
| (b)            | 23, 24, and 25                                | 45, 46, and 47                     |
| (c)            | 20  | 44                                 |
| (d)            | 33  | 48                                 |

**(5) Applying the terms of the pending claims to the disclosure**

The terms of the claims have been applied to the specification in the Preliminary Amendment filed herewith.

**(6) Compliance with 35 U.S.C. § 135(b)**

The claims were added to the application within one year of the issue date of the Vigne '175 patent, as stated in the Preliminary Amendment. As such, the claims are admissible under 35 U.S.C. § 135(b).

**B. Basis of Applicants' Entitlement to Judgment of Priority**

Applicants request judgment based on the respective effective invention dates of the present application and the Vigne '175 patent. The present application is a continuation of U.S. Patent Application 08/258,416, filed June 10, 1994. The Vigne '175 patent claims priority to three French patent applications, the earliest filed of which (serial no. 95 00747), has a January 20, 1995 filing date.

An inventor can derive no benefit from work done abroad before January 1, 1996 with respect to establishing a date of invention in a WTO country (see, e.g., M.P.E.P. § 2138.02; *Kondo v. Martel*, 220 U.S.P.Q. 47 (Bd. Pat. Inter. 1983)). The invention date of the subject matter of the Vigne '175 patent is, as such, limited to the January 20, 1995 filing date of the French '747 priority application. Accordingly, because the effective *filing* date of the present application is June 10, 1994, over six months before the effective *invention* date of the Vigne '175 patent, Applicants are entitled to judgment of priority with respect to the interfering claims.

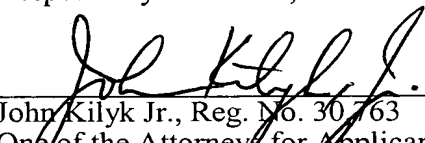
00954065-092504

**C. Conclusion**

Inasmuch as this application claims subject matter interfering with the identified patent and applicants are *prima facie* entitled to a judgment relative to the patentee, the undersigned respectfully urges that an interference between the subject application and the identified patent be declared.

While no fee is believed to be due in connection with this request, the undersigned hereby authorizes the Commissioner of Patents to deduct any fee which might be due to his deposit account, No. 12-1216. A duplicate copy of this Request is enclosed for that purpose.

Respectfully submitted,

  
\_\_\_\_\_  
John Kilyk Jr., Reg. No. 30,763  
One of the Attorneys for Applicants  
**LEYDIG, VOIT & MAYER, LTD.**  
Two Prudential Plaza, Suite 4900  
180 North Stetson  
Chicago, Illinois 60601-6780  
(312) 616-5600 (telephone)  
(312) 616-5700 (facsimile)

Date: September 26, 2001

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Kovesdi et al.

Group Art Unit: Unassigned

Continuation of Application No. 08/258,416,  
filed June 10, 1994

Examiner: Unassigned

Filing Date: September 26, 2001

For: COMPLEMENTARY ADENOVIRAL  
VECTOR SYSTEMS AND CELL  
LINES

SUBMISSION OF FORMAL DRAWINGS

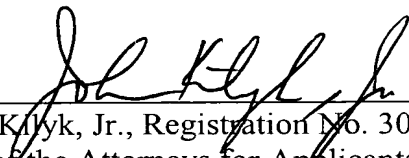
Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Applicants enclose herewith three (3) sheets of formal drawings and request that the same be made of record in the above-identified patent application.

The Commissioner is hereby authorized to charge any fees that may be required to Account No. 12-1216. A duplicate copy of this communication is enclosed for that purpose.

Respectfully submitted,

  
\_\_\_\_\_  
John Kilyk, Jr., Registration No. 30,763  
One of the Attorneys for Applicants  
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Date: September 26, 2001

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